held not to be against public policy. *Griswold* v. *Ill. Cent. Ry. Co.*, 90 Ia. 265; *American Cent. Ins. Co.* v. *Chicago & Alton Ry. Co.*, 74 Mo. App. 89.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — CONTRACT BASED ON BREACH OF EXISTING CONTRACT. — The plaintiff was under contract for one year with F, a competitor of the defendant. The defendant made a secret agreement with the plaintiff to employ him for two years. This involved a breach of the contract with F, and was done to destroy F's business. *Held*, that the plaintiff cannot recover his salary, or for materials furnished. *Rhoades* v. *Malta Vita Pure Food Co.*, 112 N. W. 940 (Mich.).

It is often averred that contracts involving the commission of a civil injury to a third person are illegal. 15 AM. & ENG. ENCYC., 2 ed., 943; 9 CYC. 468. Under this broad language an agreement by A to buy goods of B would be unenforceable by B if the sale involved a breach of B's contract to deliver the same goods to C. Parties guilty of unlawful acts are not to be outlawed to that extent. *Cf. Nat'l, etc., Co.* v. *Cream City Co.*, 86 Wis. 352. Such cases fall rather within the class where the illegality is separate from the contract, which is therefore valid. *Armstrong* v. *Toler*, 11 Wheat. (U. S.) 258. Accordingly, the rule should be limited to cases where the injury involved forms the actual consideration for the promise to be enforced. In the present case the consideration — services rendered — was lawful, and the fact that the motive inducing the defendant's promise was the violation of the plaintiff's obligation to F should not make it illegal. However, though improperly included within the general rule, the decision may be supported on the ground that the plaintiff participated in an illegal conspiracy and that it is against public policy to enforce contracts between conspirators. *Cf. Veazey* v. *Allen*, 173 N. Y. 359.

INSOLVENCY — RIGHTS OF SECURED CREDITORS AGAINST INSOLVENT ESTATE. — Upon the death of his debtor a secured creditor filed his claim with the administrator for the full amount of his debt. The estate proved to be insolvent. The secured creditor foreclosed on his security before any debts of the decedent had been paid, and contended that he was entitled to a dividend on his claim as originally filed. *Held*, that the creditor can only receive a dividend on the amount due at the time of payment. *In the Matter of the Estate of Lavinia Kapu, Deceased*, Sup. Ct. of Hawaii, Sept. 10, 1907. See NOTES, p. 280.

INSURANCE — MUTUAL BENEFIT INSURANCE — INVALID CHANGE OF BENEFICIARY. — A member of a mutual benefit association surrendered the original beneficiary certificate and procured the issue of another, naming a new beneficiary who was by statute incapable of taking. After the member's death the beneficiary of the original certificate sued the association for the proceeds. *Held*, that the proceeds will be distributed as though no beneficiary had been named. *Grand Lodge, etc.* v. *Mackey*, 104 S. W. 907 (Tex., Civ. App.). See NOTES, p. 278.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACT. — The Act of Congress of June 11, 1906, c. 3073, 34 Stat. at L. 232, 233, provided that "every common carrier engaged in trade or commerce . . . between the several states . . . shall be liable to any of its employees or in case of death to his personal representative . . . for all damages which may result from the negligence of any of its officers, agents, or employees. . . ." *Held*, that the statute is unconstitutional. *Howard* v. *Illinois Central R. R.*, U. S. Sup. Ct., Jan. 6, 1908.

The five justices forming the majority agreed only on the ground that the terms of the statute were so broad as to include intra-state commerce, that as to this the statute was unconstitutional, and that this portion could not be separated from the rest. The dissenting justices were unanimous in rejecting this interpretation. Two members of the majority joined the four in the minority in declaring that Congress had the power to prescribe such a rule of liability, if

its operation were confined solely to those engaged in interstate commerce. The remaining three members of the majority declined to commit themselves on this subject. For a discussion of the principles involved in this last point, see 20 HARV. L. REV. 481.

LANDLORD AND TENANT — COVENANTS IN LEASES — WHETHER COVENANT INDIRECTLY AFFECTING VALUE RUNS WITH LAND. — A lease from A to B contained a proviso for reëntry in case of breach of B's covenant to repair. In making a sublease of part of the premises to C, B covenanted that he would repair the part of the premises retained. The defendant, B's assignee, failed to repair; whereupon A reëntered and ejected the plaintiff, C's assignee. *Held*, that B's covenant to C did not run with the land sublet so as to give C's assignee a right of action. *Dewar* v. *Goodman*, 24 T. L. R. 62 (Eng., Ct. App., Nov. 8, 1907).

This decision affirms that of the lower court, for a discussion of which see 20 HARV. L. REV. 577.

LANDLORD AND TENANT — RENT — DISTRESS ON STRANGER'S GOODS ON PREMISES. — The plaintiff was an underlessee of rooms on the defendant's premises, in which he conducted an art club where exhibitions were held for the sale of members' paintings, the plaintiff retaining a commission. These exhibitions were open only to persons invited or introduced by members. A distress was levied on the premises by the defendants for rent due from the immediate lessee, and certain of the pictures in the art club were seized. *Held*, that the pictures are subject to the distress. *Challoner* v. *Robinson*, 42 L. J. 527 (Eng., Ch. D., July 30, 1907). Appeal dismissed, [1908] 1 Ch. 49.

As a general rule at common law, since the landlord is supposed to give credit to a visible stock on the premises, whatever chattels are found there, whether they belong to the tenant or not, may be distrained on. *Gorton* v. *Faulkner*, 4 T. R. 565; *Lyons* v. *Elliott*, 1 Q. B. D. 210. But there is an exception in favor of trade. *Connah* v. *Hale*, 23 Wend. (N. Y.) 461; *Simpson* v. *Hartopp*, Willes, 512. The principle seems to be that, where the tenant in the course of a public trade is necessarily put in possession of the goods of others, such goods, although on the demised premises, are not liable to distress for rent. However, the trade must be public; that is, a trade which is in general open to the public, though not necessarily one which is classified as a public calling. See *Muspratt* v. *Gregory*, 1 M. & W. 633, 652; 3 *ibid.* 677. Clearly, then, the present decision is sound. The plaintiff's trade was not a public trade in any sense. And the privilege, when granted, is not primarily for the trader; the law, in consideration of the benefit which the community derives from the carrying on of the trade, protects the goods. See *Muspratt* v. *Gregory*, *supra*, 645, 646.

LEGACIES AND DEVISES — LAPSED BEQUESTS AND DEVISES — SET-OFF OF DEBT OF ORIGINAL LEGATEE AGAINST LEGATEE SUBSTITUTED BY STATUTE. — A statute provided that if a legatee died before his testator the legacy should not lapse, but should go to the legatee's heir "in the same way it would have gone to the legatee had he survived." *Held*, that the legacy falling to the heir of a deceased legatee is subject to debts owed the testator by the deceased legatee. *Tilton* v. *Tilton*, 82 N. E. 704 (Mass.).

An executor may set off debts owed the testator against a legatee, since the debts are assets, the retention of which by the legatee would be inequitable. *Howland* v. *Hecksher*, 3 Sandf. Ch. (N. Y.) 519, 525. A similar set-off may be made against the legatee's assignee, since the latter stands in the shoes of his assignor. *Estate of Casper Dull*, 137 Pa. St. 116. But in the present case the primary legatee never had any interest whatever in the estate. *Matter of Hafner*, 45 N. Y. App. Div. 549. On his predeceasing the testator, his heir takes under the testator's will, to the exclusion of the legatee's husband, wife, or personal representatives. *Jones* v. *Jones*, 37 Ala. 646. If the testator in his lifetime had erased the name of one legatee and substituted another, it is clear that the legacy would not be subject to the debts of the first legatee. The statute operates in a similar way, substituting a new legatee for one who cannot